

MINUTES
UTAH SOLID AND HAZARDOUS WASTE CONTROL BOARD MEETING
Utah Department of Environmental Quality
168 North 1950 West, Building #2, (Conf. Room 101), SLC, Utah

July 13, 2006

Board Members Present: Craig Anderson (Chair), John Newman (Vice-Chair), Michael Brehm, Scott Bruce, Carlton Christensen, Kory Coleman, William Doucette, Gary Mossor, Kevin Murray, Dianne Nielson, Dennis Riding.

Board Members Excused: David Cunningham, Craig Forster.

Staff Members Present: Dennis Downs, Brad Johnson, Gary Astin, Therron Blatter, Rusty Lundberg, Bill Sinclair, Raymond Wixom, Don Verbica, Rick Page, Martin Gray, Mark Christensen, Dale Marx, Otis Willoughby.

Others Present: Gene Curtis, Chris Lilley, Kris Snow, Bruce Eloff, Bryan Slade, Lloyd Laycock, Jason Groenewold, Vanessa Pierce, Ken Flake, Clint Warby, Sean McCandless.

I. The meeting was called to order at 1:06 p.m.

II. Update on new Sound System

Arlene Lovato provided an update to the Board regarding the new sound system installed in Room 101 to improve the sound quality and audio recordings of the Board meetings. A desktop computer has been installed and recording software will be utilized to digitally record the meetings. New teleconferencing phone equipment is now an integral part of the sound system. Fifteen new gooseneck microphones have been purchased. The microphones need to be pointed directly at the person speaking and will only pick up sound coming directly in front of them. Currently, the microphones are set to remain on unless the switch is held down. Board members were asked not to play with the microphones and to try to handle them as minimally as possible as there is a small recorder under the foam on the tip of the microphone, that could come lose and jeopardize the sound quality. If a member of the audience would like to comment, they are required to come up to the microphone and make all comments into a microphone. Otherwise, a valid recording of their comments will not be obtained. Board members were asked to turn their cell phones off when the meeting starts, as all cell phones and other electronic devices will cause feedback. The Board Chairman will re-identify, for the audio recording, all Board members making motions. If the Board members have any comments or suggestions, they were asked to contact Ms. Lovato.

III. Approval of minutes for the June 8, 2006 Board meeting (Board Action Item)

It was motioned by John Newman and seconded by William Doucette and unanimously carried that the June 8, 2006, Board meeting minutes be approved.

IV. Underground Storage Tank Update

No questions were raised by the Board members regarding the Underground Storage Tank (UST) Statistics that were provided in the information packet.

V. Approval of Proposed Rule Changes to R311, Requirements for Applying for the PST Fund after a period of Non-Participation, for Initial Publication and 30-day Public Comment Period (Board Action Item)

Therron Blatter, UST Section Manager for the Division of Environmental Response and Remediation (DERR), explained to the Board members that the 2006 Utah Legislature amended the Utah Underground Storage Tank Act to change the requirements regarding participation in the Environmental Assurance Program and the Petroleum Storage Tank (PST) Trust Fund. The changes, which become effective on January 1, 2007, require that each owner and operator seeking to satisfy financial responsibility requirements through the program shall use the program for all petroleum USTs that the owner/operator owns or operates. The changes allow an UST owner/operator whose tanks are not participating in the Fund to participate without performing a site check (soil and/or groundwater samples) if the Executive Secretary (UST) determines, with reasonable cause, that soil and groundwater samples are unnecessary to establish that no petroleum has been released. By January 1, 2007, all UST owner/operators who have some petroleum USTs on the PST Fund and some off (using alternate financial responsibility mechanisms) will be required to place all tanks on the Fund or have all covered by the alternate mechanism. The proposed rule changes will define the criteria the Executive Secretary (UST) will use to determine if there is reasonable cause to believe that no petroleum has been released, and consequently to allow an owner/operator to put USTs under Fund coverage without a site check. Other changes are proposed to simplify the rule regarding issuing of certificates of compliance and remove a reference to a form that is no longer needed. The proposed changes were sent to interested stakeholders (including the UST owner/operators that have some tanks on the Fund and some off, and the Utah Underground Storage Tank Advisory Task Force) and comments were requested. No comments were received. The proposed changes involve the following:

- R311-206-2, Declaration of Financial Assurance Mechanism: The Financial Responsibility Declaration is now part of the Certificate of Compliance Application form, so the reference to the Financial Responsibility Declaration Form is removed.
- R311-206-3, Requirements for Issuance of Certificates of Compliance: This section currently has two separate subsections, one describing requirements for issuing a certificate for USTs on the PST Fund, and one for USTs that use other financial responsibility mechanisms. To simplify the rule, they will be combined into one section that deals with issuing certificates for both classes of USTs.
- R311-206-9, Removing Participating Tanks from the Environmental Assurance Program: The statement regarding subsequent participation in the program after a period of non-participation is deleted and the concept is expanded and moved to a new section, R311-206-10.
- R311-206-10, Participation in the Environmental Assurance Program after a period of voluntary non-participation: This new section specifies the requirements for participating in the program after a period of non-participation, and the requirements under which the Executive Secretary (UST) may determine that reasonable cause exists to allow an UST on the Fund without a site check. If the last two compliance inspections indicate that the tanks meet the Environmental Protection Agency (EPA) Significant Operational Compliance (SOC) criteria, and if all compliance and leak detection data required for the time period since the last inspection also document SOC, the Executive Secretary (UST) may determine that no site check is necessary to put an UST under Fund coverage. The EPA SOC criteria will be incorporated by reference into the rules. The proposed changes put a time limit of one year on this process to return to the Fund, to prevent someone several years in the future to use the "reasonable cause" wording to put an old, more leak-prone tank on the Fund without a site check.

The DERR has now come before the Board to seek approval for the initial publication of these rule changes and to begin the 30-day public comment period in order to begin the rule making process. If the Board were to approve the initiation of the public comment period, it is expected that the DERR would work with the Division of Administrative Rules to begin the public comment period on August 1, 2006, and end on August 31, 2006. There would also be a public hearing scheduled for August 22, 2006. The DERR would then review the comments received and come before the Board in September for final adoption of the rules.

Dennis Riding inquired that if an owner/operator had 90% of their facilities in compliance and 10% that did not meet their last two compliance inspections with a favorable outcome by the January 1, 2007, deadline, would the owner/operator have to take all of their facilities off of the Fund as a result of the 10% that did not meet compliance standards. Mr. Blatter explained that the owner/operator would have to make the decision to either

have all or none of their facilities on the PST Fund as the change in the UST Act requires. However, the 90% would meet the new method of SOC requirements to get back on the Fund, while the 10% would meet the existing method, which would require a site assessment. SOC is determined on a facility by facility basis.

Dianne Nielson subsequently questioned that if ten of those facilities had problems and otherwise wouldn't be accepted back on the Fund, or if they were not on the Fund before, would the owner/operator have to correct those problems before all of their facilities would be accepted onto the PST Fund. Mr. Blatter stated that the facilities that were already in compliance would need to maintain their compliance. The main problem with the non-compliant tanks would be to get them to a point where they could either meet the compliance requirement, or they would need to conduct a site assessment. If a site assessment is done and contamination is encountered, the owner/operator would need to establish the extent of the contamination before being allowed back on the PST Fund. The Fund would not cover the contamination that was discovered, but the owner/operator would have coverage for future releases.

Mr. Riding then asked that after the January 1, 2007, to January 1, 2008, time limit had passed, would investigations have to be conducted at every facility. Mr. Blatter explained that unless the facility was off the Fund for less than six months, or if the tank was less than ten years old, the facility would need to have an investigation conducted.

It was motioned by Michael Brehm and seconded by William Doucette, and unanimously carried that the Proposed Rule Changes to R311, Requirements for Applying for the PST Fund after a period of Non-Participation, be approved to go to publication for a 30-day public comment period to begin the formal rulemaking process.

VI. Legislative Report on Perpetual Care Funds for Hazardous Waste Facilities

Dennis Downs stated that in the 2005 legislative general session, the Utah State Legislature passed Senate Bill 24, which required the Solid and Hazardous Waste Control Board and the Radiation Control Board to prepare and submit a report evaluating the adequacy of funding for closure, post-closure and perpetual care for commercial hazardous waste and radioactive waste treatment, storage, and disposal facilities. In addition, the Legislature directed an evaluation of the need for funding for catastrophic failure of a landfill cell, ground water corrective action or major maintenance of a landfill cell. Mr. Downs stated that assistance to prepare the report was provided by a contractor and a copy of the report was included with the Board's information packet. Mr. Downs provided the Board with an outline of the report and timeframes for submitting the report to the legislature. Mr. Downs stated that the final report will be presented to the Board at the September 14, 2006 meeting. The report is due to the Legislature Management Committee on or before October 1, 2006.

Mr. Downs stated that the Clean Harbors Grassy Mountain Hazardous Waste Landfill and the EnergySolutions Mixed Waste Landfill are the only two commercial hazardous waste land disposal facilities in the State of Utah. Therefore, most items in the report will apply to these two existing facilities. The Boards were directed to look at closure and post-closure costs and the mechanisms funding those costs to determine if there are enough funds to provide for closure if a company goes out of business and for the post-closure period. The Legislature also directed a review of the perpetual care fund currently required for the EnergySolutions facility and whether the same requirement should be applied to commercial hazardous waste facilities. Currently, low level radioactive waste facilities are required to have a perpetual care fund for care and maintenance of the facility beyond the post-closure period which is 100 years. Finally, a consideration of catastrophic events is also required to determine if adequate funds are available to mitigate the effects of certain catastrophic events that might cause some kind of human health threat or environmental harm. The report is to be presented as one report from both Boards. The report is due to the Legislature by October 1, 2006. This report is still in DRAFT format. It is anticipated that Board action will be taken on this item in the September meeting.

Don Verbica and Otis Willoughby provided information regarding the content of the report. Mr. Verbica stated that this report will be updated every five years to address any changes that need to be made. Mr. Willoughby reviewed the report with Board members. Mr. Willoughby stated that the amount of financial assurance required and provided for closure and post-closure care of commercial hazardous waste treatment, storage, or disposal

facilities is judged to be adequate and recommended no changes. Mr. Willoughby discussed recommendations that a perpetual care fund be created and funded to provide for ongoing monitoring and maintenance of commercial hazardous waste land disposal facilities after termination of the post-closure permit and that the fund be created in such a way as to not place current facilities under an unreasonable financial burden. Currently, EnergySolutions is already paying into a perpetual care fund. Therefore, this requirement would only apply to the Grassy Mountain Facility. Mr. Willoughby also reviewed staff recommendations that no additional funds be required at this time to cover potential catastrophic events.

Dennis Downs further stated that after the Legislature has reviewed the information, it will determine whether or not to pursue legislation based on the recommendations made. At that point, it would then proceed through the normal legislative process.

Board members asked if RCRA facilities in other states are paying into perpetual care funds for future care and maintenance of commercial facilities. Mr. Verbica stated that some states are requiring perpetual care funds and such information is available in the report.

William Doucette asked if there was a mechanism to ensure that the fund will not be utilized for any other purpose than what it is intended for. Mr. Downs stated that there is no mechanism to ensure that funds will not be utilized for any other purpose than what they are intended for and this issue is addressed in the report. Mr. Downs stated that certain “loans” have been taken from these types of funds, and that the Division would have no control over those types of situations.

Mr. Willoughby asked Board members to contact him or Mr. Verbica if the Board has any comments or concerns regarding the report.

Michael Brehm asked if this is the Board’s only opportunity to be involved in any future legislation or will there be some rule in the interim that the Board could review. Mr. Downs stated that any legislation will go through the public process and the Board, as individuals or a group, has every right to comment on any legislation that is before the Legislature.

Craig Anderson stated that the Board’s immediate responsibility is to review the report and give any comments or suggestions or editorial notes to Don Verbica or Otis Willoughby by August 15, 2006. Then at the September 14, 2006, Board meeting, this issue will be presented as a Board Action Item to approve the report for submittal to the Legislature.

Mr. Downs stated that after all Board comments are received, a “Final Draft” will be sent to the Board members for review of all changes made.

Dianne Nielson clarified that the report submitted in October to the Legislature will be the subject of a Legislative Interim Committee meeting. That meeting/hearing is public. However, it is uncertain if the Legislature would choose to hold additional public meetings or hearings or how it will deal with public comments, but the report will be publicly available. Ms. Nielson stated that she did not want to leave the impression that there was some other formal public hearing in addition to the Legislature’s interim committee meeting.

William Doucette asked if there was any likelihood that the same sort of review process is being conducted at a Federal level, as other states have the same type of programs in place. Mr. Verbica stated that he believes that the U.S. EPA will leave it to the states to deal with this issue.

Dennis Riding asked if it is legislative intent to address only commercial facilities. Mr. Verbica stated that the Legislature directed an evaluation of only those commercial facilities that will have waste left in place after closure.

Ms. Nielson gave some background on the idea of whether the U.S. EPA will take action on the issue of perpetual care. The request to prepare this report came from the Legislature, but the concept of perpetual care is really a concept from the Nuclear Regulatory Commission, not the U.S. EPA. Ms. Nielson stated that the Legislature’s

request is an acknowledgement that the concept of perpetual care under federal law relative to the disposal of radioactive and mixed waste may need to be carried over into state law to ensure that there is a mechanism to fund the care and maintenance of commercial hazardous waste disposal facilities following the post-closure care period. The concept is one that is common to radioactive waste and material facilities, not RCRA facilities. Although a number of states have looked at this, we are not the first state to take action.

Gary Mossor asked who will be preparing a fiscal note to go with this to see what the financial impact will be. Mr. Downs stated that a fiscal note only gets prepared if legislation is proposed. If legislation is proposed, the legislative fiscal analyst works with the Division and other entities to prepare a fiscal note noting the impact to state government and the impact to industry, etc. Before the Legislature votes on any bill, it would have all the fiscal note information available.

Carlton Christensen asked if the report has any revenue or balance projections that would give any idea of what the impact would be on the industry. Mr. Downs stated that information is in the report.

Craig Anderson reiterated that all comments need to be submitted by August 15, 2006. The final report will be presented to the Board at the September 14, 2006 Board meeting as a Board Action Item.

VII. Commercial/Federal Facilities

A. Proposed Stipulation and Consent Order between the Board and Clean Harbors Aragonite, LLC. (Informational Item Only)

Don Verbica informed the Board of the proposed Stipulation and Consent Order (SCO) No. 0602008 between the Board and Clean Harbors Aragonite, LLC. This SCO resolves Notice of Violation No. 0512039 issued to Clean Harbors Aragonite, LLC. on December 8, 2005.

The NOV/CO covered a period of inspections from October 2004 through September 2005. Violations included the following: failing to preserve the tracking history of a container in the waste tracking system, holding rejected wastes on site for longer than 30 days, failing to properly identify the location of rejected wastes in the waste tracking system, failing to document when a waste was determined to be rejected, improperly labeling and dating containers, having open containers, failing to properly stack containers, failing to track wastes properly, failing to place the required warning signs on the infectious waste storage unit, failing to refrigerate infectious waste, failing to incinerate infectious waste within the required timeframes, failing to properly code containers of infectious waste, failing to properly characterize debris for incineration parameters, failing to properly characterize wastes that inhibit analysis, failing to document how the incineration parameters were determined, failing document waste characterization procedures, failing to prepare laboratory quality assurance reports, failing to document the laboratory room temperature, failing to place a unique barcode label on each container, storing wastes which have not yet been accepted at the facility in an area not designated for such storage, failing to vent the bulk solids building, shredder, and small sludge tank to the carbon adsorption system during backup operations, failing to maintain a database of all required equipment, failing to maintain drawings that show the approximate location of each piece of equipment, failing to properly mark all equipment, failing to maintain emergency equipment in good condition, failing to maintain a firebreak around the facility, failing to maintain emergency evacuation exits, failing to maintain the required signs on the perimeter fence, and filling the small sludge tank above the compliance level.

All violations have been resolved. The SCO includes a penalty of \$37,293.00. Two thousand dollars of the penalty are being credited at fifty cents on the dollar toward a Supplemental Environmental Project (SEP) to control tumbleweeds along the fence line.

A public comment period began on June 20, 2006 and will conclude on July 21, 2006. A recommendation to the Board will be provided during the next Board Meeting.

**B. Proposed Stipulation and Consent Order between the Board and Energy Solutions, LLC.
(Informational Item Only)**

Don Verbica informed the Board of the proposed Stipulation and Consent Order (SCO) No. 0602011 between the Board and EnergySolutions. This SCO resolves Notice of Violation No. 0601006 issued to EnergySolutions, LLC. on February 28, 2006.

The NOV identifies four violations relating to treatment, disposal, and inspections. Violation 1 describes 1,920 ft³ of waste from two shipments, requiring treatment, that were disposed untreated. Violation 2 describes spent commercial paint stripper, rags, rollers etc. having hazardous waste codes disposed in a landfill cell that is not permitted to receive hazardous waste. Violation 3 describes the lack of inspections of the leachate collection system for three days. Violation 4 describes the use of certified buffer solutions pH 2.0 and pH 12.45 after their expiration date on two mixed waste shipments for fingerprint analyses.

All violations have been resolved. The SCO includes a penalty of \$27,160.00.

A public comment period began on July 6, 2006, and will conclude on August 7, 2006. A recommendation to the Board will be provided during the next Board meeting.

Carlton Christensen noted that information provided in the Executive Summary stated that the first three violations were self-identified and reported, the last violation was discovered by DSHW personnel. Carlton Christensen questioned if the facility was aware of the violation or did they choose not to report it. Mark Christensen stated that an annual laboratory audit was conducted and the fourth violation was detected. The violation was an expired pH buffer solution. Carlton Christensen asked if this was just an oversight by the facility. Mark Christensen stated he believes it was an oversight, as it had occurred only on two shipments. This is a buffer solution for finger print analysis, not for the identification of the waste stream.

C. Proposed Stipulation and Consent Order between the Board and Clean Harbors Grassy Mountain Facility, LLC. (Board Action Item)

Don Verbica reviewed proposed Stipulation and Consent Order (SCO) No. 0603013 between the Board and Clean Harbors Grassy Mountain Facility, LLC. This SCO resolves Notice of Violation (NOV) No. 0601004 issued to Clean Harbors Grassy Mountain Facility, LLC. on February 9, 2006.

Violations included storage of containers longer than one year and failing to provide the Executive Secretary notification of non-compliance within seven days after the non-compliance was documented.

The violations have been resolved. The draft SCO includes a penalty of \$4,035.00

A 30-day public comment period on the proposed SCO was held from May 23, 2006 to June 22, 2006. No comments were received during the public comment period. The Division recommends that the Board approve the proposed SCO.

It was motioned by William Doucette and seconded by Carlton Christensen and unanimously carried to approve proposed Stipulation and Consent Order No. 0603013 between the Board and Clean Harbors Grassy Mountain Facility, LLC.

VIII. Chemical Demilitarization

A. TOCDF Update

Marty Gray stated that on June 30, 2006, the public comment period for the mustard baseline processing permit modification ended. No comments were received and that modification has been approved. Currently, TOCDF is scheduled to begin mustard operations in late August.

The ton container sampling program is continuing. Approximately 100 ton containers have been sampled and mercury has been detected as expected. The Army is being able to identify the mercury through different lots. In addition, a crack was discovered in the exhaust duct in the liquid incinerator that has been used to process spent decon. Therefore, that furnace is down while they repair the crack.

CAMDS continues with its closure operations. CAMDS closure plans currently address only the equipment within the facility and not the buildings themselves. The equipment currently being worked on is the liquid incinerator and the associated tanks. The Division staff is currently working with CAMDS to identify decontamination standards for equipment it wants to reuse and for the actual tear-down of the building, i.e. what can be treated on-site and what needs to be shipped off-site. The metal parts furnace that will be used to decon items as they are taken apart is down for maintenance. It is anticipated it will be back online within two weeks and CAMDS will start feeding metal parts into that furnace.

William Doucette asked how long will the closure period last at CAMDS. Marty Gray stated that most of the closure activities will be accomplished within 2-3 years.

Dianne Nielson asked, in regards to TOCDF, if the plan for operation of Phase One for mustard was based on the assumption that there would be a certain number of containers that would have the lower amounts of mercury and other containers with higher amounts. Ms. Nielson also asked, as TOCDF does the testing, if there are estimates in terms of ton containers that fit into the first category holding the mercury amounts of what was expected and is there a schedule for review and approval of additional equipment and the modifications that would be needed for the high mercury containers. Mr. Gray stated that the Army has seen more tons containers with mercury than they had expected. The Army feels that since they are into certain lots of mustard agent, they will finish those lots and then get back into the low mercury lots. The Division has not seen the plans for the high mercury ton containers.

Kris Snow, TOCDF representative, stated that a plan will be submitted within 6-8 months or sooner. TOCDF is currently focused on starting the baseline mustard campaign. Engineers are currently working on the sulfur impregnated carbon filters, and that would be the first modification that the Division would receive.

Carlton Christensen asked if TOCDF still anticipates meeting its treaty requirements. Mr. Gray stated that TOCDF still anticipates meeting the treaty deadline, but the overall national program does not.

Michael Brehm asked about the variability of what is assumed to be in a certain stream. Mr. Gray stated that the occurrence of mercury is from impurities that came from one of two sources. (1) A lot of the ton containers were reused containers that were previously used to contain Lewisite, and mercury was a catalyst for lewisite. The containers were emptied and not cleaned properly before they were reused. (2) Thermometers and other pressure gauges that contained mercury were broken and thrown into the containers, causing a contamination to occur.

IX. Other Business

A. Update on Board Field Trips

The September 14, 2006, Board meeting will include a tour of Wasatch Integrated Waste Management Systems in Davis County. The tour will begin at 10:00 a.m. The Board meeting will be held in a building complex located next to their landfill site. The Board meeting will begin at 1:00 p.m. Wasatch Integrated Waste Management Systems will provide lunch for the Board members. Transportation will be available if Board members choose not to take their personal vehicles. The final meeting logistics will be provided to the Board members in August.

It is anticipated that the October Board meeting will include a tour of the Geneva Steel site in the morning and the regular Board meeting will be held at 1:00 p.m. Due to the difficulty in trying to find a conference room at the facility, it is anticipated that the Board meeting will be held at its normal location.

B. No Board meeting will be held in August.

- C.** Jason Groenewold commented on the report of the evaluation of closure, post-closure, and perpetual care and maintenance for commercial hazardous waste and commercial radioactive waste treatment, storage and disposal facilities. Mr. Groenewold stated he would hope that the Board would endorse the recommendations of the staff to create that fund. Utah's experience is not unique in the country when Utah facilities have gone bankrupt, leaving cleanup issues open for debate. Mr. Groenewold stated that the \$35,000.00 figure seems very modest and may not allow for much more than fixing the occasional fence post that falls down and maybe re-painting some signs. Mr. Groenewold also stated that he hopes the Board would re-consider the recommendation to not establish a fund to address catastrophic events, so that if there is a problem in the long term, there is a pool of money set aside so that tax payers are not in the position of having to foot the bill. If nothing went wrong, the money could be returned to the facility itself. This is just one way to help ensure better protection for the citizens of the State.

Mr. Groenewold stated that for the last eight years he has been working with the Healthy Environment Alliance of Utah (HEAL) and previous to that, Families Against Incinerator Risk (FAIR). He will now be stepping down and going back to school. Mr. Groenewold formally announced that Vanessa Pierce will replace him as the primary contact. Mr. Groenewold stated that he appreciated working with the Board in the past and the role that the Board serves and the time the Board has committed to the job.

D. Adjourn

The meeting adjourned at 2:11 p.m.